Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 79-272

ROBERT A. BROWN, THOMPSON H. LANG, ALBUQUERQUE PUBLISHING COMPANY (N.S.L.) JOURNAL PUBLISHING COMPANY, a corporation, JERRY CRAWFORD and WILLIAM C. HUME,
Petitioners,

vs.

HON. RICHARD B. TRAUB,
District Judge,
Respondent.

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW MEXICO

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ARGUMENT

I

REPLY TO POINT I OF BRIEF IN OPPOSITION

Under Point I in the Brief in Opposition to Petitioners' Petition for a Writ of Certiorari (which Respondent denominates as his "Response"), the Respondent in the caption states "The Judgment Lacks Finality".

Under Point I, however, what the Respondent actually argues is not that the Judgment in question lacks finality,

rather the Respondent argues that that which had been ordered in the Judgment in question is *moot,* because the defendant Petitioners, and Petitioner Hume, had voluntarily revealed all newsmen's confidential sources that the Judgment in question had ordered the Petitioners to reveal.

More specifically, the Respondent argues that all confidential sources have been revealed as demonstrated by the fact that:

(1) Defendant Brown had, on July 13, 1979, filed supplementary answers to interrogatories numbered 31(d); 32(b); 33(c); 35; 53(g); 54; 61(b) and 61(c), as Ordered in the "Order Upon Objections to Interrogatories" set forth as Appendix C to the Petition before this Court.

(2) Petitioner Hume (still not made a defendant to this lawsuit) had, also on July 13, 1979, answered interrogatories 21(b) and 21(e), which were also required to be answered by the said Appendix C, and

(3) Petitioner Hume, as to documents listed in the subpoena duces tecum for his deposition, had indicated personally and through his deposition attorney, that all documents listed in the subpoena duces tecum were in the care, custody and control of the President of the defendant newspaper company, Mr. T. H. Lang.

So that this Court will know what the interrogatories referred to above asked, what the original answers and objections were and what the supplemental interrogatory answers added, these original and supplemental answers (which contain the interrogatory questions) are attached hereto (continuing the appendix designations of the original Petition) as Appendix F (Brown original answers to second interrogatories), Appendix G (Brown supplemental

answers to second interrogatories), Appendix H (Hume supplemental answers), respectively.

It is appropriate to reiterate at this point that the plaintiff's Complaint, filed June 13, 1975, and supplemental Complaint, filed May 31, 1978, allege as libelous four (4) separate editorials or articles, appearing on four (4) separate dates, viz:

(1) An editorial published on November 3, 1974, relating to a gubernatorial election, which stated that plaintiff Marchiondo was "adept at maneuvering in the public arena", and that "(A)s a criminal lawyer, Marchiondo thrives by having friends in key places."

(2) A paid political advertisement published on October 27, 1974, entitled "Cronies", which stated that "Jerry Apodaca would be the kind of governor who would apppoint Billy Marchiondo as chairman of the New Mexico Racing Commission."

(3) An editorial published on December 26, 1974, which stated, regarding a judicial appointment, that "(T)he political implications in McBride's appointment bother us, as does his having received financial support in at least one past election from well-known defense attorney, William Marchiondo"; and.

(4) An article published on March 26, 1977, entitled "Organized Crime Showing Interest in New Mexico", with a photograph of plaintiff Marchiondo published immediately below this headline. (See Statement of Facts and Proceedings, original Petition, pp. 3,4.) This Article, published on March 26, 1977, will be referred to *infra*, as the "Fourth Article."

Going back, for the moment, to the answers, objections

and supplemental answers to written interrogatories singled out by Respondent in Respondent's Brief in Opposition, the interrogatories to Petitioner Hume so singled out, related only to one source, a Don Devereaux, who Petitioner Hume, in answer to interrogatory 21(b), specifically states:

> "(b) After consultation with Mr. Devereaux, and with *his consent to reveal it*, I have received items from Mr. Devereaux." (Appendix H)

With regard to the supplemental answers to interrogatories filed by defendant Brown, they also revealed the prior confidential source, Don Devereaux. (Appendix G.)

The interrogatories supplementally answered by Robert A. Brown were directed, in part, to source information related to the truth of the matters published in the fourth article, referred to above, relating to "organized crime showing an interest in New Mexico". The supplemental answers to interrogatories answered by William C. Hume were *not* directed to the "organized crime showing interest in New Mexico" article. It is with regard to the fourth article that confidential source problems exist, and, more specifically, there are source problems existing with regard to the fourth article, regarding sources who furnished information relative to the contents of the fourth article *after* that article was published, the date of publication being, as indicated above, on March 26, 1977.

Respondent's argument would, therefore, be that having obtained the consent of a confidential source to reveal the identity of that source, the issue as to forced disclosure of confidential sources has become moot. That argument would be dispositive of the present Petition if, and only if, Mr. Don Devereaux had been the only confidential source

whom Petitioners had gone to the Supreme Court of New Mexico and to the Supreme Court of the United States in order to protect. Mr. Devereaux is *not* the only source sought to be protected. Should there exist any doubt as to this fact, the Affidavit of Mr. William C. Hume is attached to this Reply Brief as "Appendix I" and is incorporated herein by reference.

The real problem, which necessarily prompted the filing of this Petition for a Writ of Certiorari, and which Respondent's attorneys would, apparently, seek to ignore out of existence, is the simple fact that the only appellate court decision in New Mexico, *Ammerman v. Hubbard Broadcasting, Inc.*, 91 N.M. 250 572 P.2d 1258 (1977), which has ruled on the precise issue of the existence or non-existence of a First Amendment qualified privilege for newsmen's confidential sources in a defamation action, has distinctly and clearly ruled that no such privilege exists, and the Respondent Trial Judge has specifically applied this decision to this case.

> "The First Amendment does not grant a broadcaster any privilege, qualified or absolute, to refuse to reveal confidential information which is admittedly relevant to a court proceeding." Id., 91 N.M. 250, 257.

Respondent's attorneys have relied upon the *Ammerman* case every inch of the way, in the trial court, in the Supreme Court of New Mexico, and in this Court. (See Brief in Opposition, 5, 11.) The trial court did not limit its ruling to Mr. Don Devereaux. It stated, first in its opinion letter to counsel, and then in the Order which is the subject of this appeal, as follows:

> "All objections based on claim of privilege by a newsman not to divulge his confidential sources are denied.
> * * *

Any claimed privilege of non-disclosure based on confidential sources is denied. (Appendix E to Petition.) That portion of the Protective Order seeking non-disclosure based on confidential sources is denied." (Appendix D to Petition.)

What is true is that plaintiff's attorneys have not at this writing placed any defendant or Petitioner Hume in a contempt of court position, nor have plaintiff's attorneys obtained a default judgment against any Petitioner. Plaintiffs have exactly the broad ruling they want from the trial court, and by the strategem of holding back in the weeds on seeking forced disclosure of sources relative to the fourth article published, until such time as Petitioners would have no time to appeal a default judgment (the trial court has stated that the case will come on for trial in March, 1980), the plaintiff's attorneys assert, with child-like innocence, that the issue is "moot".

If the issue is moot, why then would plaintiff's attorneys have pending at this very moment a Motion to Compel Answers to Oral Deposition of Gerald J. Crawford, the editor of the defendant newspaper. In that Motion, filed October 19, 1979, and relating to a deposition taken on August 31, 1979, the precise issue of a continued refusal to reveal confidential sources has been raised. (See Motion to Compel Answers to Oral Deposition of Gerald J. Crawford, with specific reference to lines 15-20, p. 131, and the notice setting this matter for hearing on December 19, 1979, attached as Appendix J.)

Why, if the question of confidential sources is moot, would plaintiff's attorney on August 30, 1979, at a deposition of Petitioner William C. Hume, state:

"Mr. Romero: There is no stay in any order of the District Court in this case denying any asserted privilege based on the confidential sources of a newsman and I would like that shown on the record." (See Appendix L, attached to this Reply Brief.)

And then why would the plaintiff's attorney at that deposition, in addition to general attempts to probe sources, proceed to ask Mr. Hume if he had ever spoken to or otherwise received any information from members of the office of the United States Attorney of New Mexico, the United States Attorney for New York, the United States Attorney for Colorado, the United States Attorney for Nevada, the Department of Justice (Washington, Louisiana, California), the Federal Bureau of Investigation, the New Mexico State Police, the (New Mexico) Governor's Organized Crime Commission, the Albuquerque, New Mexico Police Department, the New Mexico Attorney General's office, the Nevada Gaming Control Commission, etc. (See Affidavit of William C. Hume, previously attached hereto as Appendix J.)

It is abundantly clear that plaintiff's attorneys regard the issue of confidential sources as anything but moot.

The real threshhold question, which the language of Respondent's Point I would indicate they would address, but which Respondent really did not address, is whether there is a justicible issue before this Court where the Trial Court has emphatically declared that no privilege against disclosure of sources exists, the Trial Court has ruled that all confidential sources will be divulged and where there has been a refusal to divulge sources, but where there has as yet been no contempt citation or a default judgment entered. Petitioners recognized this as a significant issue in whether this Court would grant certiorari when initially filing their Petition.

"This case presents two questions of substantial importance to the legal community and the public generally, one of which is a procedural question, the other is substantive. * * *

The first of these questions, the procedural question, goes to the reviewability (appealability) of the action of the New Mexico Supreme Court in the present procedural setting, which setting is the review of a discovery Order . . ." (Petition for Writ of Certiorari, pp. 7, 8.)

Petitioners will not seek to restate their entire original brief, but refer the Court to the summary, at page 16 of the original Petition:

"In summary, the finality rule should not bar review in the present case (a) under the rule of practical rather than technical construction, announced in *Cohen*[1] *and Gillespie*[2], supra, (b) under the collateral order doctrine of *Cohen*, supra, and (c) under the doctrines of First Amendment first impression importance recognized in *Miami Herald*[3] and *Mills*[4], *supra*, or of first impression and importance to the bar and to the public inherent in *Schlagenhauf*[5], *supra*."

Petitioners again respectively urge this Court to establish the principles necessary to guide libel litigants in the area of asserted newsmen's privilege by granting certiorari without the requirement that a newsman suffer default or criminal contempt, in order that this Court may settle this area of grave concern to all First Amendment media representatives.

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[1]*Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 69 S.Ct. 1221, 93 L.Ed. 1528 (1949)

[2]*Gillespie v. United States Steel Corp.*, 379 U.S. 148, 85 S.Ct. 308, 13 L.Ed.2d 199 (1964)

[3]*Miami Herald Publishing Company v. Tornillo*, 418 U.S. 241, 99 S.Ct. 2831, 41 L.Ed.2d 730 (1974)

[4]*Mills v. State of Alabama*, 384 U.S. 214, 16 L.Ed.2d 484, 86 S.Ct. 2831 (1966)

[5]*Schlagenhauf v. Holder*, 379 U.S. 104, 85 S.Ct. 234, 13 L.Ed.2d 152 (1964)

II

REPLY TO POINT II OF BRIEF IN OPPOSITION

In Point II of the Brief in Opposition, attorneys for Respondent seem to be saying that because the record fails to indicate whether the trial court applied the balancing test which Petitioners have urged is constitutionally mandated, who knows but what the trial Judge may have subjectively applied such a test. It would be more worthwhile to attempt to plow the ocean than to waste this Court's time attempting to answer this contention.

III

REPLY TO POINT III OF BRIEF IN OPPOSITION

Under Point III of the Brief in Opposition, the Respondent's attorneys attempt to demonstrate that the law relative to a newsman's privilege is clear and that there is no diversity of opinion, in *libel* cases. Petitioners again refer this Court to the *Ammerman*[1], *Dow Jones*[2] and *Caldero*[3] cases, on the one hand, as opposed to the *Hart*[4], *Mize*[5], *Carey*[6], *Goldfeld*[7] and *Rancho la Costa*[8] cases, on the other hand, all discussed at pages 24 to 27 of the original Petition, all of which are libel, or slander, cases.

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[1]*Ammerman v. Hubbard Broadcasting, Inc.*, 91 N.M. 250, 572 P.2d 1258 (1977)

[2]*Dow Jones & Company, Inc. v. Superior Court*, 364 Mass. 317, 303 N.E.2d 847 (1973)

[3]*Caldero v. Tribune Pub. Co.*, 98 Idaho 288, 562 P.2d 791 (1977)

[4]*Hart v. Playboy Enterprises*, 4 Med. L. Rptr. 1616 (D. Kan., 1978)

[5]*Mize v. McGraw Hill*, 5 Med. L. Rptr. 1156 (S.D. Tex. 1979)

[6]*Carey v. Hume*, 492 F.2d 631 (D.C. Cir. 1974)

[7]*Goldfeld v. Post Publishing*, 4 Med. L. Rptr. 1167 (Conn Superior Ct., 1978)

[8]*Rancho la Costa v. Penthouse*, 4 Med. L. Rptr. 1564 (Cal. Superior Ct. 1978)

CONCLUSION

The issue of confidential sources is anything but moot in this case. The Trial Judge, backed by the 1978 *Ammerman* decision, decided by the Court of Appeals of New Mexico, in which certiorari was denied by the Supreme Court of New Mexico and the United States Supreme Court, has ruled that there is no newsman's confidential source privilege, absolute or conditional. The libel plaintiff continues to attempt to maneuver a default, for failure to reveal sources, or possible criminal contempt, as indicated by the discovery referred to in this brief, but chooses not to attempt to maneuver the actual entry of default or an actual contempt citation while this Petition still has breath.

The issue before this Court, in deciding the threshold question of whether to grant certiorari, is not whether the issue is "moot", but whether the "final judgment" rule presently precludes certiorari. The Petitioners respectfully urge that where the Trial Judge has unequivocally stated that no newsman's confidentiality privilege exists, where a decision of the highest court of the forum state supports that decision, where to continue to resist disclosure of sources under a claim of privilege conferred by the First Amendment to the Constitution of the United States risks criminal contempt or a default judgment, and where the decisions from the various other lower courts are in hopeless conflict on the issue of newsmen's confidential sources, the time and situation is ripe for the highest court of this land to step in and declare what the law is. Neither a news media litigant nor any litigant should be required to suffer a monstrous default judgment or a criminal contempt citation in order to obtain a clarification of the bare existence of a constitutional right, where lower courts are in utter disagreement as to the existence of that asserted constitutional right. A narrow exception to the "final judgment" rule, as here sought, will elevate, not denigrate, the rules of this Court, and is supported by precedent, logic and fundamental fairness.

Respectfully submitted,

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6400 Uptown Blvd. NE,
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Albuquerque, New Mexico 87110

APPENDIX F

STATE OF NEW MEXICO

COUNTY OF BERNALILLO
IN THE DISTRICT COURT

WILLIAM C. MARCHIONDO,
Plaintiff,

vs. No. 6-75-02838

ROBERT A. BROWN, et al.,
Defendants.

ROBERT A. BROWN'S SUPPLEMENTAL ANSWERS TO INTERROGATORIES

COMES NOW, the defendant, Robert A. Brown, and as his Supplemental Answers to Interrogatories states:

QUESTION: 31. Attached hereto and to plaintiff's Complaint is a copy of an editorial entitled "Our Choice: Joseph Skeen," dated Sunday, November 3, 1974. With reference to said article, please answer the following questions:

d. Set forth in detail the source of sources of your information (including names and addresses of each source).

f. In this article, the statement is made that "primary election day money was delivered to Taos by Marchiondo's pilot. . . ." In reference to this statement, please state:

(1) The source of sources of your information, if any.

ANSWER: 31(d). For purposes of responding to this question I am assuming that name(s) are being requested. Don Devereaux, Phoenix, Arizona; names listed in Paragraph (b) previously answered; names listed in Robert A. Brown's Deposition.

ANSWER: 31(f)(1). Rena Rosequist.

QUESTION: 32. Attached is a copy of an article which appeared in the Albuquerque Journal, Saturday, March 26,

1977 entitled "Organized Crime Showing Interest in New Mexico." With reference to said article; please answer the following questions:

a. Who is responsible for the language contained in the article (if more than one person, please state the name of each person and their particular contribution to the article).

b. Set forth in detail the source or sources of your information (including names and addresses of each source).

c. The article states: "gangland figures are still wending their way into New Mexico from East and West. Some of those who have been in and out have established contacts with prominent figures close to the levers of power. Fast-buck artists have worked with and met with various attorneys, including some known to have political clout." Please set forth with particularity:

(1) The name and address of each "prominent figure" to whom you refer.

(2) The date of any such contacts and the names and addresses of each person present.

(3) The name and address of each of the "various attorneys" to whom you refer.

(4) The date of any alleged meetings between "Fast-buck artists" and any attorney named in your answer.

(5) The names and addresses of each person present at any alleged meeting between "various attorneys" and "Fast-buck artists."

(6) If in your answer to c.(1) and/or c.(3) above, Mr. Marchiondo is listed, please state with particularity all information you have which would indicate that Mr. Marchiondo is "close to the levers of power" or is "known to have political clout."

d. Included in the subject article of this interrogatory

is a photograph of William C. Marchiondo. In reference to that photograph, please state:

(1) The name of the person or persons responsible for placing the photograph in the newspaper and for its location in the newspaper.

(2) The name of the person or persons who has the obligation and responsibility of determining which photographs will be published and where each photograph will be placed.

(3) Was it the intention of the person who placed said photograph in this article to imply to the newspaper readers that Mr. Marchiondo was connected with organized crime? If your answer is yes, please state with particularity all facts upon which said person relied to establish that Mr. Marchiondo was allegedly connected with organized crime. If your answer is no, please state in detail each reason for publishing the picture and for its location.

(4) Was it the purpose of publishing this picture to malign and libel the plaintiff, William C. Marchiondo? If your answer is no, please state in detail each and every reason for publishing said picture.

e. For each and every answer given to Interrogatory 32, including the answer or answers to all sections and subsections, state in detail the name of each and every person or persons upon who you rely to establish the truth of every allegation contained in your answer and in the subject article.

ANSWER: 32. See T. H. Lang's answer to interrogatory #24, propounded to him.

QUESTION: 33. Do you know Don Devereaux? If so, please state:

a. How long you have known him.

b. What information, if any, he has ever given you regarding William C. Marchiondo, or any partner, associate,

or employee of the Marchiondo law firm, including any written documentation.

c. What information, if any, he has ever given you regarding any client of William C. Marchiondo or the Marchiondo law firm, including any written documentation.

d. How much money, if any, you have paid to Don Devereaux for any purpose.

ANSWER: 33. Yes

a. More than 10 years.

b. Don Devereaux has authorized me to release this information: Copy of letters purported to be from plaintiff to members of New Mexico Horsemen's Association and Pecos Valley Water Users Association; copy of Marchiondo & Berry balance sheet dated March 31, 1974 referencing a $5,000 loan to C. B. Trujillo.

c. See (b) above.

d. None.

QUESTION: 35. Do you know the publisher, editors, writers, or contributors of and to *Seer's Catalogue* or *Seers Rio Grande Weekly*? If so, please state:

a. The name, address, and position or title of each.

b. The length of time you have known each.

c. The amount of money, if any, which you have paid to each for any purpose.

d. Have you ever received any information from any one connected with *Seer's Catalogue* or *Seers Rio Grande Weekly* regarding the plaintiff? If so, please state:

(1) The date you received the information.

(2) The substance of the information, including copies of any written information supplied to you.

(3) The name and address of the person who supplied the information.

(4) The amount of money or other consideration, if any, you paid to the supplier of said information for any purpose.

ANSWER: See answer #33(b).

QUESTION: 54. List all reporters, investigators or other sources employed by you or known to you who have done research on William C. Marchiondo. For each such source, please state:

a. His or her name.

b. His or her employer and position.

c. His or her address and place of business.

d. His or her telephone number.

e. The dates of the investigations of William C. Marchiondo.

f. The types of research done on William C. Marchiondo.

g. Please submit copies of any work products submitted to you dealing with William C. Marchiondo.

h. If such work products have been destroyed, please include the circumstances of their destruction to include:

(1) Who destroyed it.

(2) How it was destroyed.

(3) Who ordered it destroyed.

(4) Where it was destroyed.

(5) Why it was destroyed.

i. If such work products were returned to the source, please state.

(1) Who the source was.

(2) When it was returned.

(3) Location of any copies returned.

(4) Where it was returned to.

(5) Address of person to whom it was returned.

(6) Why it was returned.

ANSWER: 54. See T. H. Lang's answer to interrogatory #46, propounded to him.

QUESTION: 61. Attached hereto is a copy of an article entitled "*For Judgeship* McBride Might Not Be Eligible" by Bob Brown, dated Thursday, December 26, 1974. This article states:

> "THE POLITICAL implications in McBride's appointment bother us, as does his having received financial support in at least one past election from well-known defense attorney, William C. Marchiondo."

In regard to this article, please answer the following question

b. Set forth in detail the source or sources of your information (including names and addresses of each source).

ANSWER: 61(b). None other than as set forth in Robert A. Brown's original Answers to Interrogatories #61(b).

. . . . . .

ROBERT A. BROWN

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

ROBERT A. BROWN, being first duly sworn, upon oath deposes and says: That he is one of the defendants in the above entitled matter; that he has read the foregoing Answers to Interrogatories and knows the contents thereof, and that the same are true to the best of his knowledge, information and belief.

. . . . . .

ROBERT A. BROWN

SUBSCRIBED AND SWORN to before me this 10th day of July, 1979.

.....
Notary Public

My Commission Expires:
Jan. 31, 1983

JOHNSON AND LANPHERE, P.C.

By .....
Attorneys for Defendants, Robert A. Brown, Albuquerque Publishing Company, Albuquerque Journal, Tom Lang, Jerry Crawford, Eric McCrossen
6400 Uptown Blvd. N.E.,
Suite 200 West
Albuquerque, New Mexico 87110
Phone: 881-3333

THIS WILL CERTIFY that on the 12th day of July, 1979 a true copy of the foregoing Supplemental Answers to Interrogatories were mailed to:

Ernesto Romero, Esq.
3602 Campus Blvd. N.E.
Albuquerque, New Mexico 87106

Jack Smith, Esq.
420 Lomas Blvd. N.W.
Albuquerque, New Mexico 87102

Lorenzo Tapia, Esq.
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P. O. Drawer AA
Albuquerque, New Mexico 87103

Thomas McKenna, Esq.
500 Citizens Bank Building
Albuquerque, New Mexico 87110

.....

APPENDIX G

STATE OF NEW MEXICO

COUNTY OF BERNALILLO
IN THE DISTRICT COURT

WILLIAM C. MARCHIONDO,
Plaintiff,

vs. No. 6-75-02838

ROBERT A. BROWN, et al.,
Defendants.

ROBERT A. BROWN'S SUPPLEMENTAL ANSWERS TO SECOND INTERROGATORIES

COMES NOW, defendant, Robert A. Brown, and as his Supplemental Answers to Second Interrogatories states:

QUESTION: 3. Please state the factual basis and sources of information of witnesses, public or confidential, if any, for the contention that on October 31, 1974, the Attorney General, David Norvell, interceded on behalf of convicted marijuana air smuggler, Roberto Burke, in an effort to get him a work travel permit allowing him to fly out of state for the law firm of Marchiondo & Berry.

ANSWER: 3. See attached Exhibit #1.

QUESTION: 4. Please state the factual basis and sources of information and witnesses, public or confidential, if any for your or the Journal's contention, that William C. Marchiondo sought to meet with Deputy U. S. Attorney General Harold Tyler about a Federal Grand Jury's subpoena of records from the Marchiondo & Berry Law Firm.

ANSWER: 4. See attached Exhibit #2.

QUESTION: 7. Please state where you obtained; from whom you obtained, and when you obtained a March 31, 1974 balance sheet of the Marchiondo & Berry Law Firm, and if you will do so without a motion to produce, please attach a true copy hereof to your answer.

ANSWER: 7. Don Devereaux has authorized me to release

this information: Don Devereaux; specific date unknown, however, it was received prior to November 3, 1974; See attached Exhibit #3.

.....
ROBERT A. BROWN

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

ROBERT A. BROWN, being first duly sworn, upon oath deposes and says: That he is one of the defendants in the above entitled matter; that he has read the foregoing Answers to Interrogatories and knows the contents thereof, and that the same are true to the best of his knowledge, information and belief.

.....
ROBERT A. BROWN

SUBSCRIBED AND SWORN to before me this 10th day of July, 1979.

.....
Notary Public

My Commission Expires:
Jan. 31, 1983

JOHNSON AND LANPHERE, P.C.

By .....
Attorneys for Defendants, Robert A. Brown, Albuquerque Publishing Company, Albuquerque Journal, Tom Lang, Jerry Crawford, Eric McCrossen
6400 Uptown Blvd. N.E.,
Suite 200 West
Albuquerque, New Mexico 87110
Phone: 881-3333

THIS WILL CERTIFY that on the 12th day of July, 1979 a true copy of the foregoing Supplemental Answers to Second Interrogatories was mailed to: Ernesto Romero, Esq., 3602 Campus Blvd. N.E., Albuquerque, N. M. 87106; Jack Smith, Esq., 420 Lomas Blvd. N.W., Albuquerque, N. M., 87102; Lorenzo Tapia, Esq., 1805 Western Bank Building, 505 Marquette, N.W., Albuquerque, N. M., 87102; Edmund J. Lang, Esq., P. O. Box 1966, Albuquerque, N. M., 87103; M. Terrence Revo, Esq., 3602 Campus Blvd. N.E., Albuquerque, N. M., 87106; John B. Tittman, Esq., P. O. Drawer AA, Albuquerque, N. M., 87103; Thomas McKenna, Esq., 500 Citizens Bank Bldg., Albuquerque, New Mexico, 87110.

.....

APPENDIX H

STATE OF NEW MEXICO

COUNTY OF BERNALILLO
IN THE DISTRICT COURT

WILLIAM C. MARCHIONDO,
Plaintiff,

vs. No. 6-75-02838

ROBERT A. BROWN, RALPH LOONEY, ALBUQUERQUE TRIBUNE, ALBUQUERQUE JOURNAL, THOMPSON H. LANG, ALBUQUERQUE PUBLISHING COMPANY (N.S.L.), JOURNAL PUBLISHING COMPANY, SCRIPPS-HOWARD PUBLISHING COMPANY, JOHN DOE I through X, JANE DOE I through XI,
Defendants.

WILLIAM C. HUMES SUPPLEMENTAL ANSWERS TO INTERROGATORIES

COMES NOW, William C. Hume, pursuant to Court's Order, and as his Supplemental Answers to Interrogatories states THAT:

QUESTION: 21. Do you know Don Devereaux? If so, please state:

a. How long you have known him.

b. What information, if any, he has ever given you regarding William C. Marchiondo or any partner, associate, or employee of the Marchiondo law firm, including any written documentation.

c. What informatoin, if any, he has ever given you regarding any client of William C. Marchiondo or the Marchiondo law firm, including any written documentation.

d. How much money, if any, you have paid to Don Devereaux for any purpose.

ANSWER: a. Approximately five or six years.

b. After consultation with Mr. Devereaux, and with his consent to reveal it, I have received items from Mr. Devereaux. I cannot remember the entire substance. Seers clips concerning Mr. Marchiordo and others, dealing with various aspects of his business dealings and his participation in and interaction with the political process and various politicians, were among the items. Also, memos and document copies, usually duplicates of information and documents published in Seers were sometimes included. I threw away many of these items after reading them. Some I passed on to my superiors, and some I placed in Journal files. None of them are under my personal control or custody.

c. I am not privy to the list of persons Mr. Marchiondo might have represented.

d. Mr. Devereaux has neither asked for nor received any payment, reimburement for expenses, or any other consideration from me; or to the best of my knowledge, from the Journal.

QUESTION: 23. Do you know the publisher, editors, writers, or contributors of and to *Seer's Catalogue* or *Seers Rio Grande Weekly*? If so, please state:

a. The name, address, and position or title of each.

b. The length of time you have known each.

c. The amount of money, if any, which you have paid to each for any purpose.

d. Have you ever received any information from any one in any way connected with *Seer's Catalogue* or *Seers Rio Grande Weekly* regarding the plaintiff. If so, please state:

(1) The date you received the information.

(2) The substance of the information, including copies of any written information supplied to you.

(3) The name and address of the person who supplied the information.

(4) The amount of money or other consideration, if any, you paid to the supplier of said information for any purpose.

ANSWER: Yes.

a. Don Devereaux, Phoenix area, Arizona. I am without knowledge as to his title, or other arrangements with Seers, except that I have seen his name as author on stories published in that newspaper. Also, see previous Answer to #26 signed on November 9, 1978.

b. See 21 a above.

c. See 21 d above.

d. See 21 b above.

.....

WILLIAM C. HUME

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

WILLIAM C. HUME, being first duly sworn, upon oath deposes and says: That he has read the foregoing Answer to Interrogatories and knows the contents thereof, and that the same are true to the best of his knowledge and belief.

.....

WILLIAM C. HUME

SUBSCRIBED AND SWORN TO before me this 18th day of June, 1979.

.....

Notary Public

My Commission Expires:
3/19/81

JOHNSON AND LANPHERE, P.C.

By .....
Attorneys for Defendants, Robert A. Brown, Journal Publishing Company, Albuquerque Publishing Company and Thompson H. Lang
6400 Uptown Blvd. N.E.,
Suite 200 West
Albuquerque, New Mexico 87110
881-3333

THIS WILL CERTIFY that on this 12th day of July, 1979, a copy of the foregoing Supplemental Answers to Interrogatories was mailed to the following:

Ernesto Romero, Esq.
3602 Campus Blvd. N.E.
Albuquerque, New Mexico 87106

Jack Smith, Esq.
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Albuquerque, New Mexico 87102

Lorenzo Tapia, Esq.
1805 Western Bank Building
505 Marquette, N.W.
Albuquerque, New Mexico 87102

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P. O. Box 1966
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M. Terrence Revo, Esq.
3602 Campus Blvd. N.E.
Albuquerque, New Mexico 87106

John B. Tittmann, Esq.
P. O. Drawer AA
Albuquerque, New Mexico 87103

Thomas McKenna, Esq.
500 Citizens Bank Building
Albuquerque, New Mexico 87110

.....

APPENDIX I

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 79-272

ROBERT A. BROWN, THOMPSON H. LANG, ALBUQUERQUE PUBLISHING COMPANY (N.S.L.) JOURNAL PUBLISHING COMPANY, a corporation, JERRY CRAWFORD and WILLIAM C. HUME,
Petitioners,

vs.

HON. RICHARD B. TRAUB,
District Judge,
Respondent.

AFFIDAVIT

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

WILLIAM C. HUME, being first duly sworn, deposes and says:

I am the same William C. Hume who appears as a Petitioner in the Petition for a Writ of Certiorari to the Supreme Court of the State of New Mexico, docketed in the Supreme Court of the United States as No. 79-272.

I was and have been employed as a newspaper reporter for the Albuquerque Journal, the newspaper published by co-Petitioner Journal Publishing Company on, and before, October 27, 1974, and up to the present date.

During the aforementioned period of time I have engaged in investigations of background information relative

to William C. Marchiondo, plaintiff in the underlying libel action. During the course of such investigation I have received information concerning Mr. William C. Marchiondo from sources who have specifically asked that I not reveal their identity, and I have so agreed. I have also received information from many other types of sources, including sources who did not request confidentiality. One confidential source was a Don Devereaux. However, with regard to Mr. Don Devereaux, I obtained from him, prior to revealing him as a confidential source in my supplemental answers to interrogatories which I filed with the trial court on July 13, 1979, a specific release from my promise of confidentiality, and specific consent that he could be revealed as a confidential source.

I have no other confidential sources who furnished me with information concerning Mr. William C. Marchiondo prior to March 26, 1977, the date that the last publication which Mr. Marchiondo alleges in his libel action to be libelous, was published. However, I do have additional confidential sources who have provided me with information concerning Mr. William C. Marchiondo subsequent to March 26, 1977.

On repeated occasions, during the course of my oral deposition being taken in the libel action in question, plaintiff's attorneys have asked for source information, which if revealed would lead to or tend to lead to divulging a confidential source. My attorneys have instructed me not to answer any questions concerning information I have obtained subsequent to March 26, 1977, and I have in fact refused to answer, on the following multiple grounds:

(1) Information concerning the identity of sources is privileged.

(2) Information obtained after March 26, 1977 is protected by the attorney work product doctrine.

(3) Information obtained by me subsequent to March 26, 1977 is an attorney-client communication and is,

therefore, privileged as an attorney-client communication.

As recently as Friday, November 16, 1979, plaintiff's attorneys have indicated that they would file a motion to compel answers to all questions I was directed not to answer at my deposition, but, to my knowledge, they have not yet filed such a motion.

For months there has been a motion filed by plaintiff below to join me as a defendant to the libel action; plaintiff's attorneys have not as yet argued that motion to the trial court and I am aware that my attorneys will resist that motion.

I will not reveal a confidential source to plaintiff or his attorneys if ordered by the trial court to do so. I consider it of the utmost importance to my profession as a newspaper reporter that I have access to information from persons who plead for anonymity, and that my effectiveness in gathering information would be tremendously impaired if I were, under the law of this land, not able to promise confidentiality.

I restate that I have no confidential sources to protect who furnished information to me relative to William C. Marchiondo prior to March 26, 1977; I do have confidential sources whom I feel I must protect who furnished information to me subsequent to March 26, 1977, concerning William C. Marchiondo.

At my deposition, the portion of which was taken on August 20, 1979, Mr. Ernesto Romero, one of the attorneys for plaintiff, in addition to asking me about any sources of my information concerning Mr. William C. Marchiondo, asked me specifically if I had received information from sources connected with the following listed governmental agencies or bodies: United States Attorney of New Mexico, United States Attorney for New York, United States Attorney for Colorado, United States Attorney for Nevada, Department of Justice (Washington, Louisiana, California),

the Federal Bureau of Investigation, the New Mexico State Police, the (New Mexico) Governor's Organized Crime Commission, the Albuquerque, New Mexico, Police Department, the New Mexico Attorney General's Office, and the Nevada Gaming Control Commission.

It is apparent to me that Mr. Romero does not consider my revealing or refusing to reveal confidential sources is a moot question.

.....

WILLIAM C. HUME

SUBSCRIBED AND SWORN TO before me this .... day of November, 1979.

.....

Notary Public

My Commission Expires:

.....

APPENDIX J

STATE OF NEW MEXICO

COUNTY OF BERNALILLO
IN THE DISTRICT COURT

WILLIAM C. MARCHIONDO,
Plaintiff,

vs. No. CV 75-02838

ROBERT A. BROWN, et al,
Defendants.

MOTION TO COMPEL ANSWERS TO ORAL DEPOSITION OF GERALD J. CRAWFORD

COMES NOW, Plaintiff, by and through his attorneys, Jack Smith, Esq. and Romero & Revo, P.A. by and pursuant to Rule 37, New Mexico Rules of Civil Procedure, to move the Court for an order empelling defendant Gerald J. Crawford to fully answer certain questions propounded to him at his oral deposition and as grounds therefore states:

1. On August 31, 1979, Gerald J. Crawford appeared at the offices of Helen Cordova, CSR, pursuant to Notice of Deposition and Subpoena.

2. The following questions were asked and the deponent refused to answer or was instructed not to answer by his attorney, Mr. James Dines, who was in attendance at the deposition. For purposes of assisting the Court in reviewing the specific questions, movant has attached as Exhibit "A" pages 122, 123 and 131 of Gerald J. Crawford's deposition. The specific questions and responses have been underlined for the Court's convenience. The citations for these specific questions and responses are as follows:

P. 122, lines 23-25

P. 123, lines 1-3

P. 131, lines 15-18.

3. The refusals to answer and the instructions not to answer were without substantial justification or legal basis.

4. The questions were asked to elicit testimony which appeared reasonably calculated to lead to the discovery of evidence admissable pursuant to Rule 26, New Mexico Rules of Civil Procedure.

5. Under the premises, the plaintiff has suffered substantial prejudice, delay and expense.

WHEREFORE, plaintiff prays for an Order of this Court compelling Gerald J. Crawford to answer fully the listed questions, for attorneys' fees incurred in obtaining this Order, and for such other and further relief as to the Court may seem just and proper under the circumstances.

Respectfully submitted,
JACK SMITH, Esq.
ROMERO & REVO, P.A.

By: .....
ERNESTO J. ROMERO
Attorneys for Plaintiff
3602 Campus Blvd., NE
Albuquerque, New Mexico 87106
Telephone: (505) 262-2131

CERTIFICATE

I certify that I did mail to opposing counsel the foregoing pleading on this 19th day of October, 1979.

.....
ERNESTO J. ROMERO

Exhibit A

that they were gambling.

Q Do you know what basis the IRE had to say that the picture showed the Plaintiff and Senator Sego gambling?

A No.

Q Did you ever seek to find out?

A There may have been an attempt to find out, yes.

Q Can you describe that attempt?

(A short discussion was held between counsel and the witness.)

MR. DINES: I think the question was the effort about trying to find out?

MR. ROMERO: Why don't you read the last question.
(The last question was read.)

THE WITNESS: Well, to begin with, I said I think there was an attempt.

(By Mr. Romero) Do you know whether there was an attempt?

A No, I don't.

Q Did you make any attempt to find out?

A No.

Q So this notion, if it was held by anyone, that the Plaintiff was gambling in the photograph, which showed the Plaintiff and Senator Sego and some other gentleman who is obscured in the

face, is an inference, so far as you were concerned?

MR. DINES: I'm going to instruct the witness not to answer the question. It is ambiguous because I don't know if it's an inference by IRE or what. The picture was never publicized or printed indicating gambling. There was no cut line or anything in the story that ever indicated gambling and, therefore — am I misunderstanding counsel's question?

Q (By Mr. Romero) Is the question confusing to you, Mr. Crawford?

A Yes, it sure is.

Q Is the photograph that was printed in Exhibit Number 231 sliced or divided in any way from another photograph?

A This one?

Q Of the Plaintiff.

A Yes.

Q It was?

A Yes.

Q And what photograph was it divided from?

A This photograph was - -

MR. DINES: In Number 231.

THE WITNESS: - - in Number 231, was part of a collage of photographs that we received from the IRE. The other part of this particular print — actually, it's not a photograph. It's a print. The other part of that was of some individual who was a subject of another IRE story.

A No

Q Nobody expressed that?

A No.

MR. DINES: If, in fact, there was such a concern, which there are no facts.

THE WITNESS: There's nothing in the story that says that.

MR. DINES: There's nothing in the record, so far, to establish that innuendo.

Q (By Mr. Romer) So nobody even brought it up in the news conference, that you can remember?

A No.

MR. ROMERO: Gentlemen, I indicated yesterday that we would terminate this Deposition, for accomodation purposes, at 12:00 Noon, and I am going to go ahead and meet my part of the bargain. You indicated, I believe, Mr. Dines, that you would instruct Mr. Crawford, today, not to answer

any questions as to sources, so forth, subsequent to 3/26/77; is that correct?

MR. DINES: That's correct.

MR. ROMERO: And that's the reason I haven't inquired into that and we will get that resolved in the interim. We had discussed a continuation of this Deposition on either the 10th or 11th of September or the 13th.

MR. DINES: The 10th or the 13th for continuation of Bill Hume. I'm still waiting to hear from him as to that day.

MR. ROMERO: We will just have to resume this Deposition

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
IN THE DISTRICT COURT

WILLIAM C. MARCHIONDO,
Plaintiff,

vs. No. CV-75-02838

ROBERT BROWN, ET. AL.,
Defendants.

REQUEST FOR HEARING

1. Jury X Non-Jury.....

2. Judge to Whom assigned: Hon. Richard B. Traub

3. Disqualified Judges: N/A

4. Specific Matters to be heard: Motion to Compel ANSWERS To Oral Deposition of Gerald J. Crawford

5. Estimated time requested for hearing all parties and witnesses: 1 hour.

6. Date Pre-Trial order filed or dates of pre-trial conference:

7. Names, addresses and telephone numbers of all counsel or parties pro so entitled to notice:

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243-2869

.....

Ernesto J. Romero
Attorney for Plaintiff

NOTICE OF HEARING

The above matter(s) will be heard before the Honorable Richard B. Traub, at the Bernalillo County Courthouse at 9:00 A.M., on December 19, 1979, with 1 hour allocated for hearing.

.....

s/Heather Brandt
CALANDER CLERK

Notice mailed: 10/22/79

By: H. Brandt